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08 UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

09 DREW THOMPSON, ) Case No. C07-549-JLR-JPD  
10 )  
11 Plaintiff, )  
12 )  
13 v. )  
14 ) REPORT AND RECOMMENDATION  
15 MR. FLEMING, et al., )  
16 )  
17 Defendants. )  
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15 I. INTRODUCTION AND SUMMARY CONCLUSION

16 Plaintiff Drew Thompson, an inmate at the Monroe Correctional Complex in Monroe,  
17 Washington, is proceeding *pro se* and *in forma pauperis* in his attempt to bring this 42 U.S.C.  
18 § 1983 civil rights lawsuit against the Washington State Department of Corrections (“DOC”),  
19 the Secretary of the DOC, the Warden of the DOC, and a DOC prison guard. On June 9,  
20 2007, this Court granted plaintiff’s amended IFP application, see Dkt. Nos. 9, but declined to  
21 serve the lodged complaint due to several specified deficiencies. Dkt. No. 11. The Court  
22 granted plaintiff leave to correct these deficiencies and file an amended complaint by July 18,  
23 2007. *Id.* This deadline was later extended by forty days. Dkt. No. 13. Plaintiff has filed an  
24 amended complaint, see Dkt. No. 14, but has failed to cure the deficiencies outlined by the  
25 Court. Accordingly, the Court recommends that plaintiff’s amended complaint be  
26 DISMISSED without prejudice.

## 01 II. DISCUSSION

02 Pursuant to 28 U.S.C. § 1915(e)(2)(B), this Court should dismiss an action if, among  
03 other things, it is frivolous or if the complaint fails to state a claim upon which relief can be  
04 granted. *See* 28 U.S.C. § 1915(e)(2)(B)(I)-(ii); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th  
05 Cir. 1990). An action is frivolous if “it lacks an arguable basis either in law or in fact.” *Neitzke*  
06 *v. Williams*, 490 U.S. 319, 325 (1989).

07 Rule 8(a) of the Federal Rules of Civil Procedure requires plaintiffs to submit a  
08 complaint “which sets forth . . . a short and plain statement of the claim showing that the  
09 pleader is entitled to relief.” Fed. R. Civ. P. 8(a). In order to state a claim for relief under  
10 § 1983, a plaintiff must assert that he suffered a violation of rights protected by the  
11 Constitution or created by federal statute, and that the violation was proximately caused by a  
12 person acting under color of state or federal law. *See WAX Techs., Inc. v. Miller*, 197 F.3d  
13 367, 372 (9th Cir. 1999) (en banc). This requires the plaintiff to allege facts showing how a  
14 *specific* individual violated a *specific* right, causing the harm alleged in the plaintiff’s  
15 complaint. *Arnold v. Int’l Bus. Machs. Corp.*, 637 F.2d 1350, 1355 (9th Cir. 1981).  
16 Additionally, although local government units can be sued as “persons” under § 1983, they  
17 cannot be held responsible for the acts of their employees under a theory of *respondeat*  
18 *superior*. *See, e.g., Collins v. City of Hacker Heights*, 503 U.S. 115, 122 (1992); *Monell v.*  
19 *Dep’t of Soc. Servs.*, 436 U.S. 658, 690-91 (1978). Rather, a § 1983 plaintiff must  
20 demonstrate that the alleged constitutional deprivation was the result of a “policy or custom”  
21 of the local government unit. *City of Canton v. Harris*, 489 U.S. 378, 385 (1989); *Monell*,  
22 436 U.S. at 690-91.

23 For reasons identical to those set out in the Court’s previous Order, see Dkt. No. 11 at  
24 2-4, plaintiff has once again failed to allege sufficient facts to place defendants on notice of the  
25 nature of his claims, or to otherwise provide any basis for jurisdiction in this Court. *See* Fed.  
26 R. Civ. P. 8(a).

01 First, plaintiff's amended complaint provides no short and plain statement showing how  
02 a *specific* individual violated a *specific* right, causing the harm alleged in his complaint. *See*,  
03 *e.g.*, *Arnold*, 637 F.2d at 1355. Second, his suit for monetary damages against the DOC runs  
04 afoul of the Eleventh Amendment, which bars federal courts from entertaining suits brought by  
05 private parties against a state or its instrumentalities absent consent, waiver, or congressional  
06 abrogation. *See Tennessee v. Lane*, 541 U.S. 509, 517-19 (2004); *see also Will v. Michigan*  
07 *Dep't of State Police*, 491 U.S. 58, 64 (1989) (holding that Congress did not abrogate the  
08 states' sovereign immunity by enacting § 1983, and that a state, state agencies, or state officials  
09 acting in their official capacities are not "persons" amenable to suit under § 1983). Third, his  
10 claim regarding the confiscation of property fails to set forth sufficient facts or argument  
11 demonstrating that the defendants' conduct implicates any federal constitutional concerns. *See*  
12 *Hudson v. Palmer*, 468 U.S. 517, 533 (1984). Fourth and finally, plaintiff has failed to  
13 demonstrate that the alleged property deprivation was the result of an unconstitutional "policy  
14 or custom" of the DOC or Monroe Correctional Complex. *Monell*, 436 U.S. at 690-91.

15 The Court advises plaintiff of his responsibility to research the facts and law before  
16 filing an action to determine whether his action is frivolous. If he files a frivolous action, he  
17 may be sanctioned. *See Fed. R. Civ. P. 11*. If plaintiff files numerous frivolous or malicious  
18 actions, the court has the authority to bar him from proceeding on an IFP basis in the future.  
19 *See DeLong v. Hennessey*, 912 F.2d 1144, 1146-48 (9th Cir. 1990) (discussing bar order  
20 requirements).

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01 III. CONCLUSION

02 For the foregoing reasons, the Court recommends that plaintiff's amended complaint  
03 and this case be DISMISSED without prejudice. Accordingly, plaintiff's "Motion for  
04 Extension of Time to Secure Files from Freedom of Information" (Dkt. No. 15) is DENIED as  
05 moot. A proposed Order of Dismissal accompanies this Report and Recommendation.

06 DATED this 28th day of November, 2007.

07   
08 JAMES P. DONOHUE  
09 United States Magistrate Judge  
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